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SENATE BILL 651

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; ABOLISHING THE DEATH
PENALTY; PROVIDING FOR LIFE IMPRISONMENT WITHOUT POSSIBILITY OF
RELEASE OR PAROLE; AMENDING AND REPEALING SECTIONS OF THE NMSA
1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-14 NMSA 1978 (being Laws 1979,
Chapter 150, Section 1, as amended) is amended to read:

"31-18-14. SENTENCING AUTHORITY- - CAPITAL FELONIES. - - [A-]
When a defendant has been convicted of a capital felony, he
shall be ~~[punished by life imprisonment or death. The~~
~~punishment shall be imposed after a sentencing hearing separate~~
~~from the trial or guilty plea proceeding. However, if the~~
~~defendant has not reached the age of majority at the time of~~
~~the commission of the capital felony for which he was~~

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1 ~~convicted, he may be sentenced to life imprisonment but shall~~
2 ~~not be punished by death.~~

3 ~~B. In the event the death penalty in a capital~~
4 ~~felony case is held to be unconstitutional or otherwise~~
5 ~~invalidated by the supreme court of the state of New Mexico or~~
6 ~~the supreme court of the United States, the person previously~~
7 ~~sentenced to death for a capital felony shall be] sentenced to~~
8 life imprisonment or life imprisonment without possibility of
9 release or parole. "

10 Section 2. Section 31-18-23 NMSA 1978 (being Laws 1994,
11 Chapter 24, Section 2, as amended) is amended to read:

12 "31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY
13 LIFE IMPRISONMENT--EXCEPTION. --

14 A. When a defendant is convicted of a third violent
15 felony, and each violent felony conviction is part of a
16 separate transaction or occurrence, and at least the third
17 violent felony conviction is in New Mexico, the defendant
18 [~~shall~~], in addition to the sentence imposed for the third
19 violent conviction [~~when that sentence does not result in~~
20 ~~death~~], shall be punished by a sentence of life imprisonment.
21 The life imprisonment sentence shall be subject to parole
22 pursuant to the provisions of Section 31-21-10 NMSA 1978.

23 B. The sentence of life imprisonment shall be
24 imposed after a sentencing hearing, separate from the trial or
25 guilty plea proceeding resulting in the third violent felony

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1 conviction, pursuant to the provisions of Section 31-18-24 NMSA
2 1978.

3 C. For the purpose of this section, a violent
4 felony conviction incurred by a defendant before he reaches the
5 age of eighteen shall not count as a violent felony conviction.

6 D. When a defendant has a felony conviction from
7 another state, the felony conviction shall be considered a
8 violent felony for the purposes of the Criminal Sentencing Act
9 if that crime would be considered a violent felony in New
10 Mexico.

11 E. As used in the Criminal Sentencing Act:

12 (1) "great bodily harm" means an injury to the
13 person that creates a high probability of death or that causes
14 serious disfigurement or that results in permanent loss or
15 impairment of the function of any member or organ of the body;
16 and

17 (2) "violent felony" means:

18 (a) murder in the first or second
19 degree, as provided in Section 30-2-1 NMSA 1978;

20 (b) shooting at or from a motor vehicle
21 resulting in great bodily harm, as provided in Subsection B of
22 Section 30-3-8 NMSA 1978;

23 (c) kidnapping resulting in great bodily
24 harm inflicted upon the victim by his captor, as provided in
25 Subsection B of Section 30-4-1 NMSA 1978; [and]

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1 (d) criminal sexual penetration, as
2 provided in Subsection C or Paragraph (5) or (6) of Subsection
3 D of Section 30-9-11 NMSA 1978; and

4 (e) robbery while armed with a deadly
5 weapon resulting in great bodily harm as provided in Section
6 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA
7 1978. "

8 Section 3. Section 31-20A-1 NMSA 1978 (being Laws 1979,
9 Chapter 150, Section 2) is amended to read:

10 "31-20A-1. CAPITAL FELONY--SENTENCING PROCEDURE. --

11 ~~[A. At the conclusion of all capital felony cases~~
12 ~~heard by jury, and after proper charge from the court and~~
13 ~~argument of counsel, the jury shall retire to consider a~~
14 ~~verdict of guilty or not guilty without any consideration of~~
15 ~~punishment. In nonjury capital felony cases, the judge shall~~
16 ~~first consider a finding of guilty or not guilty without any~~
17 ~~consideration of punishment.~~

18 ~~B. Upon a verdict by the jury or judge that the~~
19 ~~defendant is guilty of a capital felony, or upon a plea of~~
20 ~~guilty to a capital felony, the court shall conduct a separate~~
21 ~~sentencing proceeding to determine whether the defendant should~~
22 ~~be sentenced to death or life imprisonment as authorized~~
23 ~~herein. In a jury trial, the sentencing proceeding shall be~~
24 ~~conducted as soon as practicable by the original trial judge~~
25 ~~before the original trial jury. In a nonjury trial, the~~

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1 ~~sentencing proceeding shall be conducted as soon as practicable~~
2 ~~by the original trial judge. In the case of a plea of guilty~~
3 ~~to a capital felony, the sentencing proceeding shall be~~
4 ~~conducted as soon as practicable by the original trial judge or~~
5 ~~by a jury upon demand of a party.~~

6 C.] In the sentencing proceeding, all evidence
7 admitted at the trial shall be considered, and additional
8 evidence may be presented as to the circumstances of the crime
9 and as to any aggravating [or mitigating] circumstances
10 pursuant to [Sections 6 and 7 of this act.]

11 D. ~~In a jury sentencing proceeding, the judge shall~~
12 ~~give appropriate instructions and allow argument, and the jury~~
13 ~~shall retire to determine the punishment to be imposed. In a~~
14 ~~nonjury sentencing proceeding, or upon a plea of guilty, where~~
15 ~~no jury has been demanded, the judge shall allow argument and~~
16 ~~determine the punishment to be imposed] Section 31-20A-5 NMSA~~
17 1978. "

18 Section 4. Section 31-20A-2 NMSA 1978 (being Laws 1979,
19 Chapter 150, Section 3) is amended to read:

20 "31-20A-2. DETERMINATION OF SENTENCE. --

21 [A. ~~Capital sentencing deliberations shall be~~
22 ~~guided by the following considerations:~~

23 (1) ~~whether aggravating circumstances exist as~~
24 ~~enumerated in Section 6 of this act;~~

25 (2) ~~whether mitigating circumstances exist as~~

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1 ~~enumerated in Section 7 of this act and~~

2 ~~(3) whether other mitigating circumstances~~
3 ~~exist.~~

4 ~~B. After weighing the aggravating circumstances and~~
5 ~~the mitigating circumstances, weighing them against each other,~~
6 ~~and considering both the defendant and the crime, the jury or~~
7 ~~judge shall determine whether the defendant should be sentenced~~
8 ~~to death or life imprisonment] When the jury finds, beyond a~~
9 ~~reasonable doubt, that one or more aggravating circumstances~~
10 ~~exist, as enumerated in Section 31-20A-5 NMSA 1978, the judge~~
11 ~~shall sentence the defendant to life imprisonment or life~~
12 ~~imprisonment without possibility of release or parole."~~

13 Section 5. Section 31-20A-5 NMSA 1978 (being Laws 1979,
14 Chapter 150, Section 6, as amended) is amended to read:

15 "31-20A-5. AGGRAVATING CIRCUMSTANCES. --The aggravating
16 circumstances to be considered by the sentencing court or jury
17 pursuant to the provisions of Section 31-20A-2 NMSA 1978 are
18 limited to the following:

19 A. the victim was a peace officer who was acting in
20 the lawful discharge of an official duty when he was murdered;

21 B. the murder was committed with intent to kill in
22 the commission of or attempt to commit [~~kidnaping~~] kidnapping,
23 criminal sexual contact of a minor or criminal sexual
24 penetration;

25 C. the murder was committed with the intent to kill

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1 by the defendant while attempting to escape from a penal
2 institution of New Mexico;

3 D. while incarcerated in a penal institution in New
4 Mexico, the defendant, with the intent to kill, murdered a
5 person who was at the time incarcerated in or lawfully on the
6 premises of a penal institution in New Mexico. As used in this
7 subsection, "penal institution" includes facilities under the
8 jurisdiction of the corrections [~~and criminal rehabilitation~~]
9 department and county and municipal jails;

10 E. while incarcerated in a penal institution in New
11 Mexico, the defendant, with the intent to kill, murdered an
12 employee of the corrections [~~and criminal rehabilitation~~]
13 department;

14 F. the capital felony was committed for hire; and

15 G. the capital felony was murder of a witness to a
16 crime or any person likely to become a witness to a crime, for
17 the purpose of preventing report of the crime or testimony in
18 any criminal proceeding or for retaliation for the victim
19 having testified in any criminal proceeding. "

20 Section 6. Section 31-21-10 NMSA 1978 (being Laws 1980,
21 Chapter 28, Section 1, as amended) is amended to read:

22 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

23 A. An inmate of an institution who was sentenced to
24 life imprisonment as the result of the commission of a capital
25 felony, who was convicted of three violent felonies and

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1 sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978
2 or who was convicted of two violent sexual offenses and
3 sentenced pursuant to Subsection A of Section 31-18-25 NMSA
4 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a
5 parole hearing after he has served thirty years of his
6 sentence. Before ordering the parole of an inmate sentenced to
7 life imprisonment, the board shall:

8 (1) interview the inmate at the institution
9 where he is committed;

10 (2) consider all pertinent information
11 concerning the inmate, including:

12 (a) the circumstances of the offense;

13 (b) mitigating and aggravating
14 circumstances;

15 (c) whether a deadly weapon was used in
16 the commission of the offense;

17 (d) whether the inmate is a habitual
18 offender;

19 (e) the reports filed under Section
20 31-21-9 NMSA 1978; and

21 (f) the reports of such physical and
22 mental examinations as have been made while in [~~prison~~] an
23 institution;

24 (3) make a finding that a parole is in the
25 best interest of society and the inmate; and

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1 (4) make a finding that the inmate is able and
2 willing to fulfill the obligations of a law-abiding citizen.

3 If parole is denied, the inmate sentenced to life
4 imprisonment shall again become entitled to a parole hearing at
5 two-year intervals. The board may, on its own motion, reopen
6 any case in which a hearing has already been granted and parole
7 denied.

8 B. Unless the board finds that it is in the best
9 interest of society and the parolee to reduce the period of
10 parole, a person who was convicted of a capital felony and
11 sentenced to life imprisonment shall be required to undergo a
12 minimum period of parole of five years. During the period of
13 parole, the person shall be under the guidance and supervision
14 of the board.

15 C. An inmate of an institution who is sentenced to
16 life imprisonment without possibility of release or parole as
17 the result of his conviction for a capital felony is not
18 eligible for parole and shall remain incarcerated for the
19 entirety of his natural life.

20 [~~C.~~] D. An inmate who was convicted of a first,
21 second or third degree felony and who has served the sentence
22 of imprisonment imposed by the court in [~~a corrections~~
23 ~~facility~~] an institution designated by the corrections
24 department shall be required to undergo a two-year period of
25 parole. An inmate who was convicted of a fourth degree felony

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1 and who has served the sentence of imprisonment imposed by the
2 court in [~~a corrections facility~~] an institution designated by
3 the corrections department shall be required to undergo a one-
4 year period of parole. During the period of parole, the person
5 shall be under the guidance and supervision of the board.

6 [D.—Every] E. A person [~~while~~] who is on parole
7 shall remain in the legal custody of the institution from which
8 he was released, but shall be subject to the orders of the
9 board. The board shall furnish to each inmate as a
10 prerequisite to his release under its supervision a written
11 statement of the conditions of parole that shall be accepted
12 and agreed to by the inmate as evidenced by his signature
13 affixed to a duplicate copy to be retained in the files of the
14 board. The board shall also require as a prerequisite to
15 release the submission and approval of a parole plan. If an
16 inmate refuses to affix his signature to the written statement
17 of the conditions of his parole or does not have an approved
18 parole plan, he shall not be released and shall remain in the
19 custody of the [~~corrections facility~~] institution in which he
20 has served his sentence, excepting parole, until such time as
21 the period of parole he was required to serve, less meritorious
22 deductions, if any, expires, at which time he shall be released
23 from that [~~facility~~] institution without parole, or until such
24 time that he evidences his acceptance and agreement to the
25 conditions of parole as required or receives approval for his

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1 parole plan or both. Time served from the date that an inmate
2 refuses to accept and agree to the conditions of parole or
3 fails to receive approval for his parole plan shall reduce the
4 period, if any, to be served under parole at a later date. If
5 the district court has ordered that the inmate make restitution
6 to a victim as provided in Section 31-17-1 NMSA 1978, the board
7 shall include restitution as a condition of parole. The board
8 shall also personally apprise the inmate of the conditions of
9 parole and his duties relating thereto.

10 ~~[E.]~~ F. When a person on parole has performed the
11 obligations of his release for the period of parole provided in
12 this section, the board shall make a final order of discharge
13 and issue him a certificate of discharge.

14 ~~[F.]~~ G. Pursuant to the provisions of Section
15 (31-18-15) NMSA 1978, the board shall require the inmate as a
16 condition of parole:

17 (1) to pay the actual costs of his parole
18 services to the adult probation and parole division of the
19 corrections department for deposit to the corrections
20 department intensive supervision fund not exceeding one
21 thousand twenty dollars (\$1,020) annually to be paid in monthly
22 installments of not less than fifteen dollars (\$15.00) and not
23 more than eighty-five dollars (\$85.00), subject to modification
24 by the adult probation and parole division on the basis of
25 changed financial circumstances; and

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1 (2) to reimburse a law enforcement agency or
2 local crime stopper program for the amount of any reward paid
3 by the agency or program for information leading to his arrest,
4 prosecution or conviction.

5 [~~G-~~] H. The provisions of this section shall apply
6 to all inmates except geriatric, permanently incapacitated and
7 terminally ill inmates eligible for the medical and geriatric
8 parole program as provided by the Parole Board Act. "

9 Section 7. REPEAL. -- Sections 31-14-1 through 31-14-16,
10 Section 31-18-14.1, Sections 31-20A-2.1 through 31-20A-4 and
11 Section 31-20A-6 NMSA 1978 (being Laws 1929, Chapter 69,
12 Sections 1 through 10, Laws 1955, Chapter 127, Section 1, Laws
13 1979, Chapter 150, Section 9, Laws 1955, Chapter 127, Sections
14 3 and 4, Laws 1929, Chapter 69, Sections 12 and 13, Laws 2001,
15 Chapter 128, Section 1, Laws 1991, Chapter 30, Section 1, Laws
16 1979, Chapter 150, Sections 4, 5 and 7, as amended) are
17 repealed.

18 Section 8. APPLICABILITY. -- The provisions of this act
19 apply only to an individual convicted of a capital felony
20 offense committed on or after July 1, 2003. As to an
21 individual convicted of a capital felony offense committed
22 prior to July 1, 2003, the law regarding a capital felony
23 offense in effect at the time the offense was committed shall
24 apply.

25 Section 9. EFFECTIVE DATE. -- The effective date of the

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1 provisions of this act is July 1, 2003.

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